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Melissa E. Newman
Vice President-Federal Regulatory

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JUL - 7 2005

Federal Communications Commission
Office of Secretary

EX PARTE

July 7, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: WC Docket No. 05-65 *In the Matter of SBC/AT&T Applications for Approval of Transfer of Control*
WC Docket No. 05-75 *In the Matter of Verizon/MCI Applications for Approval of Transfer of Control*

Dear Ms. Dortch:

On July 6, Gary Lytle, Steve Davis, Bob Connelly and Melissa Newman of Qwest met with Michelle Carey, Legal Advisor to Chairman Kevin Martin, to discuss the above-named dockets.

The attached document was used in the discussion.

Sincerely,

Melissa E. Newman

Attachment

Copy to:
Michelle Carey – michelle.carey@fcc.gov

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Qwest *Ex Parte*

WC Docket No. 05-65
In the Matter of SBC/AT&T Applications for Approval of Transfer of Control
and
WC Docket No. 05-75
In the Matter of Verizon/MCI Applications for Approval of Transfer of Control

July 6, 2005

The Competitive Impact of the Mergers of SBC/AT&T and Verizon/MCI

- **Re-concentration in the telecommunications industry drives major concerns**
  - SBC/AT&T and Verizon/MCI will control:
    - 80% of the nation's wireline business market
    - 65% of all ILEC access lines
    - More than half of all wireless subscribers
- **FCC Public Interest Standard**
  - SBC/ATT and Verizon/MCI cannot gain approval of their mergers unless they carry their public interest burden of demonstrating that the merger will "enhance competition"
- ***Merger Guidelines 1.5***
  - Mergers of competing firms with substantial combined market shares in highly concentrated markets are presumed to create or enhance market power or facilitate its exercise in violation of Section 7 of the Clayton Act
- **The FCC should look at the SBC/ATT merger in conjunction with the Verizon/MCI merger**

Qwest as a Competitor Out-of-Region

- **Qwest's IXC/CLEC Retail Business Out-of-Region**
  - Qwest sells a complete solution to small, medium, and large businesses
  - Qwest has a certified sales force of over 1700 employees across the U.S. serving all segments of businesses
- **Qwest's IXC/CLEC Wholesale Business Out-of-Region**
  - Customers include CLECs, ISPs, IXCs, resellers, wholesale carriers
    - Dedicated Internet Access, Frame Relay, ATM, Private Line

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Qwest as a Competitor (cont.)

- **Qwest's IXC/CLEC Products/Services**
  - Long Distance
    - Domestic and international
    - Major POPs in [REDACTED] on-net cities across the U.S.
    - Additional presence in 54 more cities
    - IXC customers in [REDACTED] LATAs in 50 States (including 14 in-region states)
  - VOIP
    - Carrying over [REDACTED] VOIP minutes per month
  - Data Services
    - Data Products
      - Frame Relay, Private Line, ATM
    - IP Products
      - DIA, Hosting, iQ, WAN, Hosted VOIP, VPN

Qwest as a Competitor (cont.)

- **Qwest as QCC competes in 36 states, outside the 14 state region**
  - Facilities-based presence in [REDACTED] out-of-region cities
  - Fiber facilities with [REDACTED] active collocations
  - Nationwide fiber network with [REDACTED] national route miles of lit fiber
  - One of the largest IXCs in the U.S.
  - High dependence on special access to reach the local customer

Qwest as a Competitor (cont.)

- **Major special access purchaser from SBC**
  - Over [REDACTED] circuits in SBC region
    - [REDACTED]% of loops are provisioned on SBC special access
    - [REDACTED]% % of interoffice local transport is on SBC special access
- **Major special access purchaser from Verizon**
  - Over [REDACTED]% circuits in Verizon region
    - [REDACTED]% of loops are provisioned on Verizon special access
    - [REDACTED]% of interoffice local transport is on Verizon special access

What Do Customers Want

- **Ubiquitous supplier is necessary for integrated solutions in order to serve business customers**
  - **By having a more integrated network, as is the case where the same carrier handles the circuit end to end, a carrier obtains better performance, reliability, and security, all of which are significant measures of quality and cost**
    - Performance – more handoffs means more delay, latency, and jitter
    - Reliability – more handoffs means potentially more repairs and longer repair times; more equipment means potentially more failures and more risk of outage; more handoffs mean more interfaces, leading to more opportunity for human error
    - Security – more handoffs means more systems and interfaces, leading to more potential security gaps; more companies introduces differences in security practices, leading also to more security gaps
    - Cost – more equipment means more cost; more companies means more interfaces; more systems and repair technicians also lead to higher operational costs

Harm to Retail Competition

- **Given the overlap of AT&T's and MCI's customers, facilities, and services in the SBC and Verizon retail territories, the proposed mergers will harm intramodal retail competition**
  - AT&T and MCI are the largest retail wireline competitors to SBC and Verizon in the mass market, small business market, and enterprise segments in their territories
- **The mergers will also eliminate emerging intermodal retail competition**
  - VOIP
    - The mergers will eliminate AT&T and MCI as significant VOIP competitors
    - SBC's and Verizon's refusal to provide universal stand-alone DSL also harms the ability of VOIP providers to offer service

Harm to Wholesale Competition

- **The proposed mergers will enable SBC and Verizon to eliminate their most significant wholesale competitors**
  - SBC and Verizon are the primary sources of the collocations, switched/special access, and transport services that competitors need to serve customer locations in SBC and Verizon territory
    - Qwest orders between [REDACTED]% of all its special access circuits from SBC and Verizon in their regions
    - Approximately [REDACTED]% of all QCC long distance minutes originate and terminate in SBC and Verizon regions
  - AT&T and MCI are the most ubiquitous wholesale alternatives to SBC and Verizon, and have deployed the most alternative local facilities in the SBC and Verizon territories

AT&T and MCI's Role in Keeping Special Access Prices Down

- **AT&T and MCI's extensive networks, expansion threats, and ability to buy in volume and resell force RBOC discounts**
  - AT&T and MCI are key resellers of discounted special access
- **Pricing pressures on Qwest will remain after the mergers, but will be significantly reduced for SBC and Verizon**

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Pricing Pressures in the Qwest 14-State Region

- **Pricing Pressures on Qwest wholesale special access pricing by AT&T and MCI**
  - AT&T and MCI exert pressure on Qwest's special access pricing structure by actively engaging in negotiations for both the Regional Commitment Plan (RCP) and the contracts
- **The Qwest RCP and contract tariffs were the result of pressure placed on Qwest by AT&T and MCI**
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- **Other carriers benefit from pressure through tariff offerings**
- **AT&T and MCI continue to apply pressure**
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

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Qwest In Region Retail Pricing Pressure Examples from AT&T and MCI

Customer	Service	Standard Pricing (MRC)	Competitor*	Discounts Required	Win/Lose
A	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
B	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
C	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
D	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
E	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
F	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
G	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
H	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
I	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
J	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
K	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

AT&T and MCI's Role in Keeping Special Access Prices Down

- **SBC and Verizon are unlikely to continue to discount special access prices in the absence of competition from AT&T and MCI**
  - Acquisition of AT&T and MCI will result in an effective increase in wholesale access prices, increasing the barriers to entry and expansion for competitive carriers and hindering the ability of competitive carriers to provide competitively-priced services in the SBC and Verizon regions
- **The proposed mergers will increase competitors' dependence on SBC and Verizon facilities**
  - But for these mergers, AT&T and MCI would continue to have the incentives and scale economies to deploy more facilities to reduce their dependence on SBC's and Verizon's facilities

Out of Region Retail Pricing Pressure Examples

- **Customer A**
  - Location – [REDACTED]
  - Service – [REFACTED]
  - Size –[REDACTED]
  - Known bidders – [REDACTED]
  - Outcome – [REDACTED]
- **Customer B**
  - Location – [REDACTED]
  - Service – [REFACTED]
  - Size –[REDACTED]
  - Known bidders – [REDACTED]
  - Outcome – [REDACTED]
- **Customer C**
  - Location – [REDACTED]
  - Service – [REFACTED]
  - Size –[REDACTED]
  - Known bidders – [REDACTED]
  - Outcome – [REDACTED]
- **Customer D**
  - Location – [REDACTED]
  - Service – [REFACTED]
  - Size –[REDACTED]
  - Known bidders – [REDACTED]
  - Outcome – [REDACTED]

Proposed Remedies

- **Divestiture of all in-region networks of AT&T and MCI between their POPs and the customers, including:**
  - collocations
  - fiber rings
  - entrance facilities
  - building entrances and loops
  - interoffice transport
- **Divestiture of all in-region customers**
  - Customers must follow the divested facilities through either a retail or wholesale solution
  - Exception for customer contracts that also cover out-of-region locations and more than 50% of revenues are out-of-region
- **Divestitures must ensure that a viable competitor emerges to replace AT&T and MCI**
  - The purchaser must be able to achieve maximum scale

Proposed Remedies (cont.)

- SBC and Verizon will continue to offer intrastate and interstate special access, private line or its equivalent at the lowest rates currently offered by SBC or AT&T for that merger and Verizon or MCI for that merger for five years

- SBC and Verizon will not favor AT&T or MCI with respect to the terms and conditions under which it provides special access or any other services, as compared to the terms and conditions under which it offers these services to other companies

- SBC and Verizon will offer to competitors in their states any services or facilities that the post merger entity purchases from other ILECs out-of-region, and at the same rates, terms and conditions that the post merger entity obtains from these ILECs out of region

Proposed Remedies (cont.)

- **Stand alone DSL is a critical component in the ability of VOIP to become a competitive alternative**
  - Stand alone DSL is technically feasible to offer as Qwest offers it in all locations where 1.5 Mbps DSL
  - Issues Qwest addressed to offer service
    - Suppress telephone number assignment for non-POTS
    - Directory listing without charge
    - Modify wholesale ordering systems to allow resale
- **Enforcement protection including compliance reporting**

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